

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
COUNTY OF NEW KENT  
CHICKAHOMINY WASTEWATER TREATMENT PLANT  
Permit No. VA0088480**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and County of New Kent, for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Facility” means the Chickahominy wastewater treatment plant owned and operated by New Kent County and located in New Kent County, Virginia.
7. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

8. "Permit" means VPDES Permit No. VA0088480, which became effective December 6, 1999, and expires December 6, 2004.
9. "O&M" means operations and maintenance.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. New Kent County owns and operates the Chickahominy wastewater treatment plant in New Kent County, Virginia. This Facility is the subject of VPDES Permit No. VA0088480, which allows the County to discharge treated wastewater into an unnamed tributary of Rumley Marsh in strict compliance with terms, limitations and requirements outlined in the permit. The Permit has VPA modules that allow the County to discharge to the Colonial Downs (VPA00572) and Brickshire (VPA00571) systems during the summer months, where the treated effluent is used as irrigation water.
2. The Department issued an NOV to the County on September 22, 2003, for BOD, TSS, ammonia-nitrogen, fecal coliform, settleable solids, and total phosphorus permit limit violations reported by the County for the February through July 2003 monitoring periods. The Facility was also cited for failure to provide flow data for the July 2003 monitoring period and for failure to provide information to explain the reported effluent violations.
3. The Department met with the County Director of Public Works on October 10, 2003, to discuss compliance issues at the Facility. The Director stated that the new sequencing batch reactors (SBRs) installed at the Facility were not operating properly. A plan was discussed to bring the Facility back into compliance. The County stated that it had most of the plan implementation underway and it had met limits in September except for phosphorus.
4. The Department issued a NOV to the County on February 17, 2004, for a total phosphorus violation reported on the September 2003 DMR. The County was also cited in the NOV for additional TSS and total phosphorus violations reported on the October and December 2003 DMRs.
5. The Department and the County met on February 27, 2004 to discuss the NOV's. The new interim Director of Public Works for the County stated that the Facility ceased discharging to the receiving stream and began sending its discharge to the Colonial Downs (VPA00572) and Brickshire (VPA00571) facilities. In addition, the Director of Public Works stated that the measures taken in the fall of 2003 were not enough to meet limits and the County was repairing and replacing parts of the system with limited resources. The County Administrator stated that the Facility is important to the future growth plans for the County, and that they would like some time to make further repairs to the system.

## **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders New Kent County, and New Kent County agrees, to perform the actions described in Appendix A of this Order and to comply with the interim effluent limits specified in Appendix B which are attached hereto and incorporated herein by reference. In addition, the Board orders New Kent County, and New Kent County voluntarily agrees, to pay a civil charge of \$3,400 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for New Kent County. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of New Kent County, for good cause shown by New Kent County, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to New Kent County by DEQ on September 22, 2003 and February 17, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, New Kent County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. New Kent County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. New Kent County declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by New Kent County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. New Kent County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. New Kent County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. New Kent County shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which New Kent County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and New Kent County. Notwithstanding the foregoing, New Kent County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. New Kent County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to New Kent County.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve New Kent County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, New Kent County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 7, 2004.

James J. Golden (Sr.)  
Robert G. Burnley, Director  
Department of Environmental Quality

New Kent County voluntarily agrees to the issuance of this Order.

By: Gary F. Christie, County Administrator  
Date: 7/26/04

Commonwealth of Virginia

City/County of New Kent

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of July, 2004, by Gary F. Christie, who is  
(name)

County Administrator of New Kent County, on behalf of the County.  
(title)

Connie C. Malls  
Notary Public

My commission expires: 5/31/08

## **APPENDIX A**

New Kent County shall:

1. On or before November 1, 2004, submit to the Department for approval, a corrective action plan (CAP) detailing operation and maintenance procedures and/or Facility modifications that will be implemented to prevent effluent violations. The CAP shall include a schedule of implementation that, once approved by the Department, shall become a part of this Order.

**Pursuant to this Order** communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060

New Kent County shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion**.

## APPENDIX B

### Interim TSS, Ammonia, and Phosphorus, limitations

During the period beginning with the effective date of this Order and lasting until completion of the CAP, discharges shall be limited and monitored by New Kent County in accordance with VPDES Permit VA0088480, except as specified below:

	Concentration Monthly Average	Quantity Monthly Average
TSS	21 mg/L	7.41 kg/d
Phosphorus	6.6 mg/L	2.83 kg/d
	Concentration Daily Maximum	Quantity Daily Maximum
Ammonia	13 mg/L	4.52 kg/d